FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7805 OF 2006.

Office Notes,Office Memorandum of Coram apperance,Court's Orders & Directions and Registrar's Order.	: Court or Judge's Order.

Mr.Vivek Kantawala, Advocate for the Petitioner.

Mr. Niranjan Waghela, Advocate for the Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:1ST DECEMBER,2006.

1. Heard.

2. The petitioner challenges the order dated 4th September, 2006 passed by the Appellate Bench dismissing the Notice taken out by the petitioner for vacating the stay granted by the Appellate Bench for the execution of the decree in favour of the petitioner. The grievance of the petitioner is that inspite of failure on the part of the Respondent to furnish the undertaking within the time specified by the Trial

Judge, the Appellate Bench continued the stay of the execution of the decree.

3. A plain reading of the impugned order discloses that the Appellate Bench in its discretion, which has been judiciously exercised, has granted the stay of the execution of the decree. In the facts and circumstances of the case, vacating the stay granted in the matter virtually results in rendering the appeal filed by the respondent to be nugatory. However, the petitioner has made further grievances about certain observations made in the impugned order, particularly on the point of possession of the premises with the respondent. It is the contention of the petitioner that inspite of the decree for eviction on the ground of sub-letting, the Appellate Bench has observed about the possession of the premises with the respondent. Needless to say that the observations are merely to decide the notice taken out by the petitioner. None of those observations can come in the way of the

Appellate Bench while deciding the Appeal on merits. However, that itself would not justify interference in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution. The Appellate Bench having exercised its discretion judiciously and there being no jurisdictional error committed while passing the impugned order, there is no case for interference. Hence the petition fails and is accordingly rejected with the above observations.

[R.M.S.KHANDEPARKAR,J.]